

1. BROADBAND SERVICE

1.1 Subject to the terms and conditions as stated herein, the City of Longmont, (referred to as Longmont Power & Communications or LPC), as a non-common carrier, hereby provides to Customer, for its exclusive use, the Broadband Service set forth on the Broadband Service Request. Customer agrees to be bound by all the terms and conditions contained herein and in the Broadband Service Request (also called the BSR).

1.2 The Broadband Service shall be provided to Customer by LPC in accordance with LPC's technical specifications.

1.3 LPC will use its best efforts to deliver the Broadband Service by the estimated delivery date(s) set forth on the BSR. In no event shall LPC be liable for any failure to deliver the Broadband Service by the estimated delivery date(s) set forth on the BSR.

1.4 Customer shall be responsible for obtaining the facilities necessary to connect to the Broadband Service as identified on the BSR. Customer shall connect to the Broadband Service at the connection points identified on the BSR. LPC and Customer shall jointly agree on the location for such connections within each connection point. The connections shall be made by LPC or a third party on behalf of LPC.

1.5 Upon reasonable notice thereof and without any notice in the event of an emergency, nothing in these Terms and Conditions shall prevent LPC or any LPC contracted third party from taking such actions as are necessary to repair and maintain the facilities by which the Broadband Service is provided hereunder but in either event, LPC shall not incur any liability as a result thereof even though, for example, the actions may render the Broadband Service unusable for a period of time. Notwithstanding the foregoing, and except for emergencies, LPC shall attempt to perform routine repair and maintenance at such times that will have minimum disruptive impact on the continuity or performance of the Broadband Service.

1.6 If LPC determines that the reason for repair and maintenance is due to Customer-provided facilities or Customer's actions or omissions, or the facilities, acts or omissions of any party with whom Customer has a relationship, such as a customer of Customer, Customer shall compensate LPC for the reasonable costs and expenses thereof.

2. BROADBAND VOICE OVER INTERNET PROTOCOL (VoIP) SERVICE

2.1 LPC, as a non-common carrier, hereby provides to Customer, for its exclusive use, the VoIP Service set forth on the Broadband Service Request. Customer agrees to be bound by all the terms and conditions contained herein and in the Broadband Service Request (also called the BSR).

2.2 The VoIP Service shall be provided to Customer by LPC in accordance with LPC's technical specifications. VoIP Service shall only be available to customers via LPC provided Broadband Service and Customer must maintain their Broadband Service subscription to continue to receive LPC VoIP Service...

2.3 LPC will use its best efforts to deliver the VoIP Service by the estimated delivery date(s) set forth on the BSR. In no event shall LPC be liable for any failure to deliver the VoIP Service by the estimated delivery date(s) set forth on the BSR.

2.4 If LPC determines that the reason for repair and maintenance is due to Customer-provided facilities or Customer's actions or omissions, or the facilities, acts or omissions of any party with whom Customer has a relationship, such as a customer of Customer, Customer shall compensate LPC for the reasonable costs and expenses thereof.

3. COMPENSATION AND PAYMENTS

3.1 In consideration of the Broadband Service(s) provided by LPC to Customer, in addition to the connection costs referred to in Section 1.4 above, Customer agrees to pay to LPC the fees set forth on the LPC Broadband Rate Card ("Fees"), plus local, state and federal taxes or other fees including regulatory charges, if any, for the Broadband Service(s), plus any fees assessed as a result of this Agreement under any state or federal universal service fund, such as the Universal Service Fund set forth in Section 254 of the Telecommunications Act of 1996. LPC may amend these Fees at any time upon notice to the Customer.

3.2 Customer's obligation to pay the Fees shall commence upon Delivery, which is the date the service is available for use by Customer. The Fees for any period of time under this Agreement that is less than a calendar month shall be prorated based on the actual days of such month.

3.3 Customer shall pay the Fees subject to LMC CHAPTER 14.20, UTILITY BILLS.

3.4 Billing or usage disputes shall be addressed pursuant to the terms set forth in LMC CHAPTER 14.20, UTILITY BILLS.

4. USE OF BROADBAND SERVICE(S) AND COOPERATION

4.1 Customer shall take no action that (a) interferes in any way with, impairs, or adversely affects the facilities used by LPC to provide the Broadband Service(s); (b) exposes LPC or such facilities to any claim, lien, encumbrance or legal process; (c) violates these Terms and Conditions or any law, rule or regulation, including, but not limited to, any transmission Customer intentionally or knowingly sends or the content thereof that violates any copyright or export control laws, or that is libelous, slanderous or an invasion of privacy; or (d) permits the resale of the Broadband Service(s) by the Customer or any third party without LPC's consent, which may be granted or denied in LPC's sole discretion. Customer shall promptly notify LPC of any event that would be reasonably likely to give rise to any such interference, impairment, affect, exposure, reselling, or violation.

4.2 If LPC reasonably determines that Customer is using the Broadband Service(s) in violation of Section 3.1 above, LPC may terminate the Broadband Service(s).

4.3 Customer and LPC each agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder imposed by any governmental or quasi-governmental authority.

4.4 Under federal law, Customer has the right to confidentiality, and LPC has a duty to protect and keep confidential information about the amount, type, and destination of Customer's VoIP service usage (CPNI). Customer's personal and usage information is not public and will not be released pursuant to the terms set forth in LMC CHAPTER 14.20, UTILITY BILLS.

4.5 LPC VoIP Service will accept neither 976 nor 900 prefix or any such call types in which charges are placed on an end-users bill and where LPC might be expected to act as a collection

agent. Use of VoIP Service to support predictive dialers for more than five percent (5%) of all calls made is prohibited without LPC's written consent.

5. LIMITATIONS ON LIABILITY; DISCLAIMER OF WARRANTIES

5.1 In no event shall LPC be liable to the Customer for any indirect, special, incidental, punitive or consequential damages, whether or not foreseeable, including loss of revenue, loss of Customer's, loss of goodwill, or loss of profits arising out of or in relation to these Terms and Conditions or the performance or non-performance of any obligation hereunder, whether arising out of contract or tort.

5.2 LPC MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER THIRD PARTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE BROADBAND SERVICE(S) OR ANY OTHER MATTER WHICH IS THE SUBJECT OF THESE TERMS AND CONDITIONS, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

5.3 LPC shall not be liable for any mistakes, errors, omissions, interruptions, delays, outages or defects in the Broadband Service(s) which are caused by force majeure, repair and maintenance or the Customer or third parties with whom Customer has a relationship, such as a customer of Customer. LPC shall not be liable for any act or omission associated with systems, Broadband Service(s), or facilities which LPC does not furnish, including acts or omissions associated with the operation of Customer's system, Broadband Service(s), or facilities.

5.4 In no event shall an outage be deemed a default under these Terms and Conditions.

5.5 Notwithstanding any other provisions of these Terms or Conditions, the Broadband Rate Card or the Broadband Service Request, LPC does not waive any rights, immunities, privileges, monetary limitations to judgments and defenses available to LPC under common law or the Colorado Governmental Immunity Act, Sec. 24-10-101 et seq. C.R.S.

6. INDEMNIFICATION

The Customer releases and agrees to indemnify, defend and hold harmless LPC, its agents, officers, employees and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from the Customer's use or misuse of the Broadband Service(s), including but not limited to any violation or infringement of contractual rights, privacy, confidentiality, copyright, patent, trademark, trade secret or other intellectual property; from use or failure of the 911/E911 functionality or any other dialing associated with a home security, home detention, medical monitoring or other similar system; and from Customer's breach of any provision of these Terms & Conditions.

7. FORCE MAJEURE

Without limiting any other provision of these Terms and Conditions, LPC shall not be held liable for any loss, damage, delay or failure to provide or maintain the Broadband Services(s) caused by anything beyond its control, such as acts of God, acts of civil or military authority, government regulations, eminent domain, embargoes, labor stoppage, epidemics, war, police actions, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, severe weather conditions, inability to secure facilities, products or services of other persons including transportation facilities.

8. GOVERNING LAW

These Terms and Conditions and any issues arising out of or in relation hereto shall be governed by the laws of the State of Colorado, without regard to its choice-of-law provisions. The Customer agrees that the federal and state courts of Colorado alone have jurisdiction over all disputes arising under these Terms and Conditions and the Customer consents to personal jurisdiction of those courts with respect to any disputes arising under these Terms and Conditions.

9. RELATIONSHIP OF THE PARTIES

The Customer is independent from that of LPC and nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent, or employer and employee relationship between the parties.

10. MISCELLANEOUS

10.1 Customer recognizes that LPC may enter into agreements with third parties to perform all or part of its obligations hereunder and that references herein to LPC include, where applicable, its agents and independent contractors.

10.2 LPC shall own and maintain the wiring external to the premises with the Broadband Services, the optical network terminal and any other equipment necessary to provide the Services. Notwithstanding the foregoing, Customer shall be responsible for damages and repairs to any such equipment caused by Customer's acts or omissions. Upon cancellation or termination of the Services, Customer shall return the equipment to LPC at 1100 South Sherman Street, Longmont, CO.

10.3 Customer agrees to allow LPC to enter his or her property for the purposes of installing, adjusting, repairing, replacing, maintaining, moving, auditing or removing any equipment if necessary. Customer represents that Customer either owns the property or has the right to allow LPC to install any necessary equipment and wiring to provide the Broadband or VoIP Service. Customer should always ask for proper identification anytime an LPC employee or contractor requests entry to the property. If identification is not provided, Customer should not allow access.

10.4 These Terms & Conditions and any other documents incorporated by reference, including but not limited to the Broadband Service Request and the Broadband Rate Card, constitute the entire agreement and understanding between you and LPC with respect to LPC's provision of the Service and related equipment. They replace any and all prior written or verbal agreements. If any portion of this agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions shall remain in full force and effect. No waiver of any breach or default under these Terms and Conditions shall be a waiver of any other breach or default. Neither the course of conduct between the parties nor trade practice shall modify these Terms and Conditions.